

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.147 of 2014
and
M.A.No.06 of 2015

Tuesday, the 14th day of June 2016

THE HONOURABLE JUSTICE S.S. SATHEESACHANDRAN
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Smt. A.Gunammal,
aged 66 years
M/o Ex-15357559F Late Hav.A.Krishnamoorthi
(6 Mountain Division Signal Regiment)
No.4 V.O.C. Street, Moorthy Nagar
Avadi, Kamaraj Nagar Post
Chennai-600 071.

...Applicant in both applications

By Legal Practitioner:
M/s. V.J. Arul Raj
& Natarajan

vs.

1. The Chief of Army Staff
Through Adjutant General
Army Headquarters,
New Delhi-110 011.

2. Managing Director
Army Group Insurance Fund
Adjutant General's Branch
Integrated HQ of MOD (Army)
Rao Tula Ram Marg
Post Bag No.14, PO-Vasant Vihar
New Delhi-110 057.

3. The Senior Record Officer
Signals Records
Cheetapahar, Jabalpur
Madhya Pradesh.

4. Smt. S.Kokila, W/o Ex-15357559F
Late Hav. A. Krishnamoorthi
D/o Late Seenivasan (Postman)
Kadhar Pettai, Vaniyambadi Taluk
Vaniyambadi
Vellore District, Tamil Nadu.

5. Union of India
Rep. by Secretary
Ministry of Defence
Government of India
New Delhi.

6. Principal Controller of
Defence Accounts (Pension)
Draupadi Ghat, Allahabad
U.P. 221014.

7. K.Vikram, S/o Late A.Krishnamoorthi
aged 19 years, Kadhar Pettai
Vaniyambadi Taluk
Vaniyambadi, Vellore District
Tamil Nadu.

8. Miss K.Sakthisri
D/o A.Krishnamoorthi
aged 15 years
Kadhar Pettai, Vaniyambadi Taluk
Vaniyambadi, Vellore District
Tamil Nadu.

*(Respondents-7 and 8 impleaded by order
in M.A.No.5 of 2015 in O.A.No.147 of 2014
by order dt. 30.04.2015)*

.. Respondents in both applications

By Mr. G.Venkatesan, CGC
For R.1,3, 5 and 6
By Mr. K.Sannjay
For R.2

By Mr. B.A. Thayalan, Advocate
*appointed as Court Guardian
for R.8, as per Order dt. 16.12.2015.
No representation for R.4 and R.7*

ORDER

[(Order of the Tribunal made by
Hon'ble Lt Gen Surendra Nath, Member (Administrative)]

1. This application has been filed by the applicant who is the mother of Late Hav A.Krishnamoorthi and she submits that this application is to direct the first and second respondents to grant 25% of the Army Group Insurance Scheme benefits amounting to Rs.5,04,357/- (Rupees five lakhs four thousand three hundred and fifty seven only) to her.
2. Briefly, the applicant states that she is the mother of Late Hav A.Krishnamoorthi and widow of an Ex-Serviceman who expired in the year 1986 and is getting family pension with which she finds it difficult to survive. The applicant submits that Late Hav A. Krishnamoorthi was her only son who was taking care of her when he was alive. She is aged 66 years. Her two daughters are married and they are unable to support the applicant due to their family circumstances. She submits that her daughter-in-law Smt. Kokila, the 4th respondent herein, after receipt of retirement benefits, family pension, etc., has not taken care of the applicant. She further submits that the 4th respondent has already received a sum of Rs.15 lakhs from and out of the Army Group Insurance Scheme benefits and, however, the 25% of share amounting to Rs.5,04,357/ (Rupees five lakhs four thousand three

hundred and fifty seven only) has been held by the second respondent to disburse the same, in case of claims arising out of any representation or any Court case. She submits that as a mother of the deceased soldier, she is a legal heir, as per the Hindu Law and denial of the benefits to a legal heir is contrary to Law. Apart from the legal rights, she also seeks that her application may be considered on humanitarian basis. Therefore, she seeks that the respondents may be directed to pay 25% of the AGI Scheme benefits, due to her, upon the death of her son, Late Hav A.Krishnamoorthi.

3. The respondents-1, 3, 5 and 6 have filed a reply statement and submit that the applicant's son Late Hav A.Krishnamoorthi expired on 10.07.2011 and the deceased soldier nominated his wife Mrs. S. Kokila (widow) conferring right to receive 100% share of Army Insurance Scheme benefits in the event of his death. Accordingly, after receiving the documents, AGI Directorate paid 75% of the AGI Scheme benefits of Rs.20,00,000/- (Rupees twenty lakhs only), i.e., Rs.15,00,000/- to the wife of the deceased including share of two children. The balance 25% of the AGIF amount has been invested in Social Security Deposit Scheme as cumulative deposit in the name of AGIF for three years, if the mother of the deceased soldier or any other legal heir makes any claim. This amount can only be disposed of on the consent of widow Smt. Kokila and since she has not agreed to

pay, the amount is still pending in the said deposit. Therefore, this application is liable to be dismissed.

4. Respondent No.2, AGIF has filed reply statement and would submit that the Hon'ble AFT, Chandigarh Regional Bench had constituted a Larger Bench to decide the jurisdiction of insurance matters of AGIF and the Hon'ble AFT had decided vide its order dated 19.02.2014 that the matters relating to AGIF Scheme is service matter and can be adjudicated by the Hon'ble AFT under Armed Forces Tribunal Act 2007. Challenging the said order, a Writ Petition No.7576 of 2014 was filed by this respondent on 23.04.2014 before the High Court of Punjab and Haryana at Chandigarh, which is pending. The respondent would further state that the dispute in question is a matter between the mother and widow of the deceased as to who is entitled to receive the insurance amount on account of the death of the individual and therefore, it has to be adjudicated upon by a Civil Court of appropriate jurisdiction. It was further submitted that as per the nomination papers, the Late Hav. A. Krishnamoorthi had conferred the right on his wife to receive 100% insurance amount, in the event of his death. Respondent No.2 would reiterate the averments made by Respondents-1, 3 and 5 regarding the non-compliance of the applicant in obtaining the consent affidavit from the widow of the deceased for payment of balance amount to the

applicant. The Respondent would further submit that it has discharged its liability by making payment of insurance amount to the widow and children of the deceased in the ratio of 75% (including share of two children) and 25% invested in Social Security Deposit Scheme of AGIF for three years as stated and the same will be released with accrued interest to the entitled beneficiary on the adjudication of the dispute between legal heirs. Therefore, the Respondent would submit that the present O.A. is not maintainable and is liable to be dismissed as devoid of any merit.

5. Mr. B.A. Thayalan, learned counsel being the Court Guardian for Respondent No.8 filed a reply statement and would submit that the amount is due to be paid only to the wife and children of the deceased soldier as per the nomination made by him and it is not payable to any other person, as per law. As per legal position, the minor as part of the family of the wife of the deceased soldier is fully entitled to the balance amount retained by the AGIF and it cannot be given away by the Respondents to the applicant or anybody else since the nomination stands in the name of the wife of the deceased soldier only. However, he submits that taking a humanitarian view, it may be considered to release only the interest that would accrue from the said deposit to the applicant to meet the financial constraints.

6. Respondent No.4 who is the widow of the deceased soldier A.Krishnamoorthy has not come forward to agitate the claim of the applicant. Respondent No.7, son of the deceased soldier has also not appeared before this Court.

7. We heard the arguments of the learned counsel for applicant, and the learned CGSC and the learned counsel for AGIF appearing for Respondents-1,2,3,5, 6 and Mr. B.A.Thayalan, advocate who was appointed as Court Guardian for R.8. We also perused the documents produced by all the parties.

8. The legal issue in this O.A. lies in a narrow compass, i.e., whether the applicant is entitled to 25% of the AGIF scheme being the mother of the deceased soldier, in view of the fact that the 4th respondent has been nominated and so she is entitled to 100% AGI Scheme benefits and the applicant cannot at all claim any right. It is to be seen as to whether nomination right can be prevailed upon the right of succession. There is no doubt that the applicant being the mother of the deceased soldier is also an heir to claim the benefits of her son. On the background of the legal position enshrined by the judgment of *Smt. Sarbati Devi & Anr. v. Smt. Usha Devi (1984) 1 SCC 424*, the applicant argues that the nomination does not confer any beneficial interest in the nominee, but he/she is the only the hand that accepts the amount. The learned counsel for applicant has cited a

judgment of the Hon'ble Apex Court held in *Shipra Sengupta vs. Mridul Sengupta & Ors.*, wherein, it was extensively dealt with identical issue involved in this case. It will be worthwhile to quote some of the passages as under:

" 14. *In Sarbati Devi (supra)*, this Court has laid down that a mere nomination does not have the effect of conferring to the nominee any beneficial interest in the amount payable under the life insurance policy, on death of the insurer. The nomination only indicates the hand which is authorized to receive the amount on payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession.

15. The applicant also placed reliance on the judgment of this Court in *Vishin N. Khanchandani & Another v. Vidya Lachmandas Khanchandani & Another* (2000) 6 SCC 724, wherein this Court held that the law laid down in *Sarbati (supra)* holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.

16. Learned counsel for the appellant also placed reliance on a Division Bench judgment of the Delhi High Court in *Ashok Chand*

Aggarwala v. Delhi Administration & Others (1998) VII AD (Delhi) 639. This case related to the Delhi Co-operative Societies Act. The High Court while following Sarbati Devi case (supra) held that it is well settled that mere nomination made in favour of a particular person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates the hand which is authorized to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession, governing them.

17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession.

18.

19. In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case amounts so received are to be distributed according to the Hindu Succession Act, 1956. The State Bank of India is directed to release half of the amount of general provident fund to the appellant now within two months from today along with interest. "

9. In the light of the above decision, we are of the view that the applicant is entitled to receive her entitlement of 25% from and out of AGI Scheme benefits. The respondents are therefore directed to release the 25% of AGI Scheme benefits with accrued interest within a period of

three months, in default, to pay interest at 9% per annum on the said amount. O.A. is disposed of accordingly. No costs.

10. In view of the above order in the main O.A., injunction order granted in M.A.No.06 of 2015 on 10.02.2015 directing the 2nd respondent not to disburse the balance available 25% amounting to Rs.5,04,357/- (Rupees five lakhs four thousand three hundred and fifty seven only) of the Army Group Insurance Scheme to the Respondents-4, 7 and 8 is vacated and closed.

17. Before parting, we record our appreciation for the services rendered by Mr. B.A. Thayalan, learned counsel appointed as Court Guardian for Respondent-8. His Counsel Fee is fixed as Rs.5,000/- and the same is directed to be paid to him by the Tamil Nadu State Legal Services Authority, Chennai.

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

JUSTICE S.S.SATHEESACHANDRAN
MEMBER (JUDICIAL)

14.06.2016

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

vs

To:

1. The Chief of Army Staff
Through Adjutant General
Army Headquarters,
New Delhi-110 011.

2. Managing Director
Army Group Insurance Fund
Adjutant General's Branch
Integrated HQ of MOD (Army)
Rao Tula Ram Marg
Post Bag No.14, PO-Vasant Vihar
New Delhi-110 057.

3. The Senior Record Officer
Signals Records
Cheetapahar, Jabalpur
Madhya Pradesh.

4. Smt. S.Kokila, W/o Ex-15357559F
Late Hav. A. Krishnamoorthi
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Respondents-7 and 8.

9. M/s. V.J. Arul Raj

and Natarajan
Counsel for applicant

10. Mr. G.Venkatesan, CGC
For respondents-1, 3, 5 and 6.

11. Mr. K.Sannjay
For Respondent No.2

12. Mr. B.A. Thayalan
Advocate/Court Guardian for R.8
I Cross Street, Sripuram Colony
St. Thomas Mount, Chennai-600 016.

13. The Member-Secretary,
The Tamil Nadu State Legal Services
Authority, High Court Compound, Chennai-104.

14. OIC, DAKSHIN BHARAT AREA, Chennai.

15. Library, AFT, Chennai.

HON'BLE MR.JUSTICE S.S. SATHEESACHANDRAN
MEMBER (JUDICIAL)
AND
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